

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 05-cv-10571-RWZ

JOSEPH SCHMITT,
Plaintiff,

v.

MASSACHUSETTS DEPARTMENT OF
CORRECTION, et al.,

Defendants.

**DEFENDANT'S OPPOSITION AND MOTION TO STRIKE PLAINTIFF'S
EMERGENCY MOTION FOR COURT ORDER REGARDING
LEGAL PHOTOCOPIES**

Now come the defendants and move to strike plaintiff's "Emergency Motion for Court Order" for failure to comply with Federal Rule of Civil Procedure 11. Plaintiff's motion and the certificate of service are not signed as required by Fed.R.Civ.P. 11(a.) In the alternative, defendants oppose plaintiff's Motion seeking a court order regarding legal photocopies because plaintiff has failed to meet the requirements for injunctive relief.

Plaintiff's request should be **DENIED** for the following reasons.

1. Plaintiff has filed his "Emergency Motion for Court Order" in every lawsuit he has pending with the undersigned counsel, including Civil Actions No. 05-cv-10573, 05-cv-12580, 06-cv-10569, and 06-cv-10766.
2. He claims that he has "limited access to the law library" and seeks an order requiring defendants to "photocopy research material for plaintiff" within 24 hours. He also seeks to have the material photocopied in his presence.
3. The current Library Services policy at the Treatment Center is attached as Exhibit 1. An Amendment to the policy provides that inmates/residents fill out a request for legal

photocopying. According to the amendment to the library services regulation, “each day the director of rehabilitative services or staff designee and/or the de. Legal documents will generally be copied and returned within 48 hours or within a reasonable period of time should an unforeseen circumstance develop.” See Exhibit 2.

4. Plaintiff’s allegation that he has access to the library “approximately two hours a day during business days only” is contradicted by page 1 of the library policy which sets forth library hours. See Exhibit 1.
5. Plaintiff has failed to establish that he has or will suffer any harm as a result of the existing policy regarding legal photocopies. The fact that plaintiff is able to file the same motion in at least six of his pending cases contradicts his claim that his library/photocopy access is restricted in some way. The fact that the copies may not be completed as fast as plaintiff would like hardly necessitates a court order.
6. A preliminary injunction is a drastic measure that a Court should not grant unless the movant, by a clear showing, carries its burden of persuasion. Benoit v. Hillman, 1998 WL 1181783, *3, *citing* Charles Wright and Arthur Miller, 11 Federal Practice and Procedure, § 2948 at 129-130 (1995).
7. The preliminary injunction standard is familiar. Under it, a district court typically must consider four elements: the probability of the movant’s success on the merits, the prospect of irreparable harm absent the injunction, the balance of the relevant equities (focusing upon the hardship to the movant if an injunction does not issue as contrasted with the hardship to the nonmovant if it does), and the effect of the court’s action on the public interest. Matos v. Clinton School District, 367 F.3d 68, 73 (1st Cir. 2004).

8. Plaintiff has failed to meet the requirements for an order regarding legal photocopying and is wasting this Court's time with his duplicative requests for the same relief in all his pending cases.
9. For the foregoing reasons, plaintiff's Motion for a Court Order should be DENIED.

Respectfully submitted,

NANCY ANKERS WHITE
Special Assistant Attorney General

/s/ Jody T. Adams

DATED: November 1, 2006

Jody T. Adams, Counsel
B.B.O. # 633795
Department of Correction, Legal Division
70 Franklin Street, Suite 600
Boston, MA 02110-1300
(617) 727-3300 ext. 169

CERTIFICATE OF SERVICE

I hereby state under the pains and penalties of perjury that I did this day serve a photocopy of the above document upon plaintiff (pro se) via first class mail.

Date: 11/1/06

/s/ Jody T. Adams

Jody T. Adams, Counsel



COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
MASSACHUSETTS TREATMENT CENTER
PROCEDURAL ATTACHMENT TO:



103 CMR 478 LIBRARY SERVICES

PURPOSE: The purpose of this procedure is to establish Massachusetts Treatment Center regulations regarding library services. The library is staffed with a full time librarian who is employed by the contracted vendor. The library is an information center for the institution. Library services support, broaden, and strengthen institutional programs. The library provides a variety of services, materials, and programs comparable to a public library.

I. LIBRARY HOURS

Movement to the library shall be conducted in accordance with the institutions movement schedule and procedures. Subject to staff availability, the library shall be open at the following times:

Monday	8:40a.m. - 10:50a.m.	1:00p.m. - 4:00p.m.
Tuesday	8:30a.m. - 10:50a.m.	1:00p.m. - 4:00p.m.
Wednesday	(closed in the a.m.)	1:00p.m. - 4:00p.m. 7:00p.m.-8:45p.m.
Thursday	8:30a.m. - 10:50a.m.	1:00p.m. - 4:00p.m. 7:10p.m.-8:45p.m.
Friday	8:40a.m. - 10:50a.m.	1:00p.m. - 4:00p.m.
Saturday	9:00a.m. - 11:00a.m.	Book Mobile - Civils
Sunday	9:00a.m. - 11:00a.m.	Book Mobile - Inmates

The library hours are posted on the library door/window.

II. LIBRARY RULES

Every inmate/resident involved in a library program is expected to meet the following standards of behavior:

- a. Will not be disruptive by speech or action.
- b. Will respect library staff, inmate/resident library clerks, and other inmates/residents.
- b. There will be no loitering, card playing or games in the library.
- d. Food and drink will not be allowed in the library.
- e. COMMUNICATING out of the library window to the Minimum Privilege Unit (MPU) is a violation of department and institutional regulations. Violators may be subject to disciplinary action or the issuance of an Observation of

EXHIBIT

tabbed

1

Behavior Report (OBR) or Disciplinary Report.

- f. All materials utilized by inmate/residents in the library must be returned intact. Each inmate/resident is responsible for the safe return of all loaned material. Reimbursement for all damaged material will be assessed to the inmates/residents account. The notice of any damaged or destroyed property should be brought to the attention of the institution librarian or inmate library clerks. If an inmate/resident is found to have defaced or destroyed library property, his account will be frozen and his library privileges suspended until the amount of the damaged property has been reimbursed.
- g. The following specified areas in the library are off limits to all inmate/residents (except for inmate/resident library clerks or others with staff authorization)
 - 1. Librarians' office (B2-9)
 - 2. Copying area
- h. All inmates/residents will dress appropriately for the library in order to be admitted. Compliance with the Learning Center's dress code is mandatory. Clothing will be neat and clean. Thermal under shirts, cut off shirts or sweaters, tank tops, sweat pants, and shorts (all types) is **not** acceptable attire for the library. Shirts must be buttoned and tucked in. Also, hats, head coverings and/or sunglasses are not allowed except those approved in writing for religious or medical reasons.
- i. All inmates/residents utilizing the library must sign in and out on the applicable library sheet located on the desk adjacent to the library entrance.
- j. Inmates/residents are allowed in/out of the library during posted movement times only. (With the exception of emergency situations and with the approval of the corridor OIC.)
- k. Inmates/residents may not donate books or magazines to the library collection.
- l. All inmates/residents will be pat searched prior to entering the library.
- m. Inmates/residents will be randomly searched upon leaving the library.

III PROCEDURES FOR CLERK HIRING AND TRAINING

Inmate/resident library clerks will be hired according to the following procedure:

- a. The work assignment officer will post available library clerk positions on each housing unit. Interested inmates/residents must submit their name to the work assignment officer. The work assignment officer shall enter the inmate/resident names into the IMS work review and assign inmate screens.
- b. The IMS work review and assign inmate screen shall be reviewed by IPS staff and a recommendation (approval/denial) is entered into the screen. If

denied a comment is entered.

- c. The IMS work review and assign inmate screen shall then be reviewed by the DOS and a recommendation (approval/denial) is entered into the screen. If denied a comment is entered.
- d. The Deputy Superintendent of Classification/Treatment shall conduct make the final recommendation (approval/denial) and enter it into the screen. If denied a comment is entered.
- e. The approved inmate/resident will be interviewed by the librarian.
- f. The selected inmate/resident clerk will be trained by the librarian for the general library clerk position. The general library inmate/resident clerk will be training in the use of the circulation plus software, Dewey decimal system, photocopying procedures and other applicable library policies/procedures. The training will be documented on a checklist.
- g. The selected inmate/resident law clerk will be trained by the librarian utilizing the DOC standardized "Training Manual for Inmate Law Library Clerks". The inmate/resident clerks will be required to complete the competency examination upon the conclusion of the training. Inmate/residents that successfully complete the required law clerk training will be assigned through the work assignment officer in the applicable IMS screen.
- h. All inmate/resident library clerks will be asked to sign a "Use Agreement." Inmates/resident who do not sign the agreement will not be unable to use the circulation computer.
- i. All training will be documented and maintained by the librarian.

IV. BORROWING PROCEDURES

Library materials may be signed out of the library with the exception of legal materials.

- a. Books and/or audio cassette tapes may be borrowed for a two (2) week period. At the end of that period, the inmate/resident must return the book(s) and/or audio tapes to the library and have it/them renewed for a second two (2) week period.
- b. To borrow a book and/or audio tape the inmate/resident shall take the items to the circulation desk. If they have a library barcode, the library clerk will use the barcode scanner attached to the general library circulation computer to check the items out of the library. The due date will automatically record a two (2) week borrowing period. The library clerk will stamp the return card with the correct due date. If the book and/or audio tape does not have a barcode, the inmate library clerk will write the inmate/resident name and housing unit on the borrower card. The borrower card will then be placed on file under the date that the material is due.

- c. Bar coded reference material may be borrowed for a period of one (1) week. The circulation computer will calculate the due date. No renewals will be allowed on reference material.
- d. An inmate/resident may sign out a maximum of five items at a time and may have no more than this number signed out to him at any time.
- e. The circulation software is checked weekly for overdue items. Notices are printed out by the librarian and sent to the units by a library clerk. Three overdue notices will be sent out over a one (1) month period. If no response is received after this time period, the inmate/resident will then have his account frozen and library privileges suspended until the inmate/resident library material is properly accounted for.

V. ADDITIONAL LIBRARY SERVICES

The Library provides the following additional services:

- a. Current magazine issues are available for in library use only and do not circulate.
- b. Daily newspapers do not circulate. Issues of the past few days are placed on the shelves below the current issues.
- c. The librarian will explain the services available, the library collection and library hours to all new inmates/residents during the orientation process.
- d. A notary public is available on a weekly basis. The day and times are posted in the library.
- e. The library will maintain copies of all inmate accessible departmental and institutional policies and procedures.

The institution shall make reasonable efforts to assist inmates/residents in the preparation and processing of their legal documents. Items such as paper, pencils, and envelopes shall be provided for all inmates/residents who request them and shall be available free of charge. The librarian or staff designee makes legal supplies available to the inmate/resident population during regular library hours. To receive supplies an inmate/resident must fill out the Supply Request Form (appendix I). Lined paper will be available on a biweekly basis depending upon supply availability. The librarian will make special accommodations for extra paper on an individual basis. One pencil will be available monthly depending upon supply availability. Typing paper will be distributed by library staff on a need basis. In order to obtain envelopes, an inmate/resident must address each envelope to the receiving party. The librarian or staff designee to ensure that the address is indeed legal will scan the envelope.

VI. INTER LIBRARY LOAN PROCEDURES

In an effort to supplement the acquisition of new books, the librarian shall, on weekly bases bring a selection of books into the institution from the Bridgewater Public Library. An

inmate/resident may make an interlibrary loan request by filling out the appropriate form which is located in the library and submit it to the librarian.

VII. LEGAL COPYING

Original legal material will normally be copied Monday through Friday depending on staff availability and/or supplies. The following guidelines shall be adhered to:

- a. Legal documents to be photocopied must be clearly labeled with the inmate/resident name and a signed and dated cover letter including the name and address of the receiving party. The inmate/resident must also attach the "Department of Correction Legal Photocopying Request Form (attachment C to 103 CMR 478)" with their materials. These forms are available in the library. The form will contain the name of the inmate/resident, the number of pages to be copied, and the number of copies requested. Legal documents must be addressed to either a court or an attorney.
- b. Inmates/residents may bring their legal material to the library during general movement periods. The documents must be given to a library staff person.
- c. Each day the director of rehabilitative services or staff designee and/or the deputy superintendent of treatment/classification will scan/review legal photocopying materials to ensure that they are indeed legal material. Legal documents will generally be copied and returned within 48 hours or within a reasonable period of time should an unforeseen circumstance develop.
- d. An inmate/resident library clerk, under the supervision of a staff person will copy the approved materials.
- e. Legal materials and photocopies must be picked up in the library by the inmate/resident it belongs to. The inmate/resident must sign the legal photocopying request form indicating that he has received his legal material.
- f. Published materials will not be photocopied. Examples of published materials are books, pamphlets, booklets, internet materials, etc.)
- g. Accommodations will be made to those inmate/residents on unit restriction who require legal document photocopying.

VIII. LAW LIBRARY ACCESS PROCEDURE FOR MPU INMATES/RESIDENTS

Law library access for inmates/residents who are housed in the MPU shall be allowed in accordance with 103 CMR 423 - Special Management Unit policy, the DOC standard operating procedure as well as the facility procedural attachment.

IX. MPU BOOK CART

The library will supply a book cart and a collection of books, magazines and newspapers for use in MPU. The book cart will be located in the MPU trap. The circulation of books will

be handled as follows:

- a. An inmate/resident may request a book through the unit officer. The unit officer will allow the inmate/resident to review the book cart index.
- b. The inmate/resident will request and sign for the receipt of the book(s) utilizing the "Book Cart Request Form" (appendix II). An inmate/resident may be issued up to three (3) books.
- c. The unit officer must also sign for the issuance and return of the book(s). Completed forms shall be maintained in the MPU trap for three (3) months. After three months the forms must be forwarded to the housing captain.
- d. A change of books on the cart will take place monthly or when deemed necessary by the librarian.

X. ACQUISITION/PURCHASES OF NEW BOOKS, MAGAZINES OR PERIODICALS

The deputy superintendent of classification/treatment shall approve the acquisition/purchasing of new books. Consideration shall be given to suggestions from the institutional staff and inmates/residents when selecting library materials. Consideration shall be given to address the various needs of the inmates/residents in regards to reading levels, ethnic, cultural, religious backgrounds, and language barriers as in the case of the non-English speaking population. Criteria for selection shall include:

- a. Readability and popular appeal.
- b. Quality of writing.
- c. Reputation and significance of the author and publisher.
- d. Timeless and permanence of the material.
- e. Relationship to the rest of the collection.

Standard professional selection tools shall be used as a basis for the judgement of quality.

XI. ANNUAL LIBRARY INVENTORY

An inventory of all library equipment and materials shall be conducted annually in accordance with 103 CMR 478 attachment A - Library Services: Inventory Procedures.

Superintendent

Date

Reviewing Authority

Date

POST.

LIBRARY HOURS

Monday	8:40 a.m. - 10:50 a.m.	1:00 p.m. - 4:00 p.m.
Tuesday	8:30 a.m. - 10:50 a.m.	1:00 p.m. - 4:00 p.m.
Wednesday	(closed in the morning)	1:00 p.m. - 4:00 p.m.
Thursday	8:30 a.m. - 10:50 a.m.	1:00 p.m. - 4:00 p.m.
Friday	8:40 a.m. - 10:50 a.m.	1:00 p.m. - 4:00 p.m.
Saturday	9:00 a.m. - 11:00 a.m.	Book Mobile - Civils
Sunday	9:00 a.m. - 11:00 a.m.	Book Mobile - Inmates

**DEPARTMENT OF CORRECTION
LEGAL PHOTOCOPYING REQUEST FORM**

This form must be completely filled out if you are requesting legal photocopying. The Librarian will only copy original documents.

Date: _____

Name: _____

Inmate Number: _____

Institution: _____

Housing Unit: _____

Number of pages of document to be copied: _____

Number of copies: _____

Cite the legal rule or Court Order or provide reason for the number of copies requested: _____

If there is a Court deadline, you must write it here: _____ and attach proof.

Please inform the Librarian if there is anything else s/he needs to know in order to process this request:

Attach the document to be copied to this Legal Photocopying Request Form.

For Librarian use only:

Approved: _____

Denied: _____

Reason for denial:

Not original legal document
 Failure to cite legal rule or Court Order
 Other: _____

Date received: _____

Date completed: _____

Total number of pages: _____

**MASSACHUSETTS TREATMENT CENTER
LAW LIBRARY
SUPPLY REQUEST FORM**

Print Name _____ Commitment # _____ Unit _____ Date _____

I am in need the following legal supplies to complete legal work:

White envelopes: _____

Manila envelopes: _____ 9x12

10x13

Priority mail envelopes: _____

I understand that legal supplies are for legal work only. Misuse may result in disciplinary action.

Received: _____
Inmate/Resident Signature _____ Date _____

Staff issuing supplies: _____ Date: _____

**MASSACHUSETTS TREATMENT CENTER
MPU BOOK CART REQUEST FORM**

Inmate/Resident Name: _____ # _____ Room # _____ Date: _____

The library provides a book cart and a collection of books for use by inmates/residents who are housed in the Minimum Privilege Unit (MPU). Inmate/residents may request to view the book collection index. Utilizing this form inmates/residents may request up to three (3) books.

Inmates/residents must sign for the receipt of the book(s). The unit officer shall also sign for the issuance and return of the book(s).

Book Title	Inmate/Resident Signature	Date Inmate/Resident Received Book	Officer Issuing Book	Date Book Returned	Officer Receiving Book

If the book(s) requested were not provided to the inmate/resident, indicate so and provide a reason (e.g.) book not available, etc.

Completed forms must remain in the MPU trap for three (3) months and then forwarded to the housing captain.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF CORRECTION
MASSACHUSETTS TREATMENT CENTER
PROCEDURAL ATTACHMENT TO:

tabbed

2

103 CMR 478 LIBRARY SERVICES

AMENDMENT

The following sections of MTC's procedural attachment to 103 CMR 478 - Library Services have been amended. Added language is identified in **bold** print.

VII. LEGAL COPYING

Original legal material will normally be copied Monday through Friday depending on staff availability and/or supplies. The following guidelines shall be adhered to:

- a. Legal documents to be photocopied must be clearly labeled with the inmate/resident name and a signed and dated cover letter including the name and address of the receiving party. The inmate/resident must also attach the "Department of Correction Legal Photocopying Request Form (attachment C to 103 CMR 478)" with their materials. These forms are available in the library. The form will contain the name of the inmate/resident, the number of pages to be copied, and the number of copies requested. **Legal documents must be addressed to either a court or an attorney.**
- c. Each day the director of rehabilitative services or staff designee and/or the deputy superintendent of treatment/classification will scan/review legal photocopying materials to ensure that they are indeed legal material. **Legal documents will generally be copied and returned within 48 hours or within a reasonable period of time should an unforeseen circumstance develop.**

Superintendent

Date

Reviewing Authority

Date